

Attorney's Docket No.: 08935-257001 / M-4979

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : William L. Bowden et al. Art Unit : 1745
Serial No. : 10/085,303 Examiner : Raymond Alejandro
Filed : February 28, 2002
Title : NON-AQUEOUS ELECTROCHEMICAL CELL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY TO ACTION OF AUGUST 14, 2003

In reply to the Office Action of August 14, 2003, Applicant submits the following remarks.

The Examiner has indicated that Applicants' prior Reply (filed July 8, 2003) was non-responsive to an election of species requirement (Species # 1 – claims 1-7; and Species #2 – claims 8-17). But the species requirement was improper.

The claims are directed to a lithium electrochemical cell. Claim 1 recites a cell comprising an electrolyte comprising a mixture of two solvents and a mixture of two salts. Claim 8 as originally-filed recites a cell comprising an electrolyte comprising a mixture of three solvents (two of which are recited in claim 1) and the same mixture of salts recited in claim 1. To underscore the relationship between claims 1 and 8, Applicants previously amended claim 8 to depend from claim 1.

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For the claims to be restricted to different species, the claims **must** be mutually exclusive. The MPEP is instructive for providing a general test to determine mutual exclusivity:

The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species. (See MPEP 806.04(f))

Here, the test for proper species restriction is not satisfied. Claim 8 recites a limitation (i.e., ethylene carbonate) not recited in claim 1. But, claim 1 does not recite any limitations not recited in claim 8. Thus, the claims are not mutually exclusive, and restriction to different species is improper.

Applicants request that claims 1-17 be examined.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: August 29, 2003

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EXAMINER RAYMOND ALEJANDRO

U.S. PATENT AND TRADEMARK OFFICE (PATENT)

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FACSIMILE COMMUNICATION

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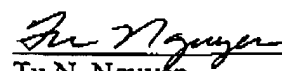
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Sir:

Attached to this facsimile communication cover sheet is a Reply, faxed this 29th day of August, 2003, to Group 1745, the United States Patent and Trademark Office.

Respectfully submitted,

Date: August 29, 2003


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